SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

DATE: 05/01/97

HONORABLE LAWRENCE W. CRISPO JUDGE

HONORABLE
22. A. SALDANA, CSL JUDGE PRO TEM
Deputy Sheriff

DEPT. 58

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NONE Reporter

3:00 pm BC008240

SYED MOUZZAM ALI
VS.
CITY OF LOS ANGELES

170.6 JUDGE DIANE WAYNE

Plaintiff

Counsel

NO APPEARANCES

Defendant

Counsel

NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MATTER

The Court having taken the matter under submission, issues its ruling in accordance with the attached STATEMENT OF DECISION, attached hereto, consisting of four (4) pages and incorporated herein.

A true copy of this minute order and attachments are mailed to counsel by U.S. Mail, first class, addressed as follows:

ROSARIO PERRY
1333 Ocean Avenue
Santa Monica, CA 90401

MICHAEL KLEKNER
1700 City Hall East
200 N. Main Street
Los Angeles, CA 90012

STATEMENT OF DECISION

This is a bifurcated trial where, in phase two, the court rules on two issues:

(1) Whether the City of Los Angeles violated Mr. Ali's due process rights.

(2) What damages will be awarded in phases one and two.

The court, having considered all the evidence, now rules as follows:

PHASE 2:

DUE PROCESS VIOLATIONS: FOR THE DEFENDANT

Procedural Due Process

The two principal mechanisms for protection of procedural due process are notice and opportunity to be heard. Mr. Ali contends that he was given neither. The state must afford " . . . a full judicial mechanism with which to challenge the administrative decision to deny an application for a permit." Midnight Sessions v. City of

Philadelphia (3rd Cir. 1991) 945 F.2d 667. Ali was provided a copy of the city's motion of August 8, 1989 prior to the City Council hearing. His financial advisor, Mr. Hilton, was aware of the motion and Mr. Ali had actual notice of the motion.

Mr. Ali was also given an opportunity to be heard. Mr. Tharpe gave Mr. Cacciopo, Ali's former attorney, the requisite papers for challenging the City's actions. Ali refused to avail himself of this remedy and chose to litigate instead. His lawsuit was eventually dismissed for failure to exhaust his administrative remedies.

Mr. Ali was therefore given both notice and opportunity to be heard with respect to the City's action and his procedural due process rights were not violated.

Substantive Due Process

Mr. Ali contends that the City's denial of the demolition permit gives him a substantive due process claim under 42 U.S.C. 1983. The test for establishing such a claim is to (1) show a "valid property interest within the meaning of the Constitution" *and* (2) show that the government's denial of the application was (i) oppression or (ii) abuse of government power that shocks the conscience or (iii) action that is legally irrational because not sufficiently related to any legitimate state interests. *Clark v. City of Hermosa Beach* (1996) 48 C.A.4th 1152.

Mr. Ali did have a valid property interest in the Ferraro hotel. However, the City's actions were not oppressive nor do they shock the conscience. While the

actions of the City's employees were negligently performed, there is no credible evidence that they deliberately sought to deprive Mr. Ali of his due process rights. On the contrary, the court finds that they acted in good faith. Finally, the City's action, though misguided, was an attempt to further legitimate interests in protecting both its zoning integrity and the public. Consequently, there was no violation of Mr. Ali's substantive due process rights.

DAMAGES: FOR THE PLAINTIFF

Phase 1:

The parties have stipulated as to damages on the inverse condemnation cause of action. The court, having found both regulatory and physical takings, awards plaintiff undisputed damages as stated in items 1 through 5 in the stipulation filed on April 15, 1997. The total of these items is $1,179,821. The court also awards the disputed damages contained in items 6 and 7 of the stipulation on damages. But for the City's action, Mr. Ali would have sold the Ferraro to Mr. Harouni and would not have incurred the property taxes he ultimately paid. The total of these items is in the agreed upon amount of $19,416. The total award is **$1,199,237.**

Phase 2:

The court finds no due process violations. Therefore, no damages are awarded on this cause of action.

WRIT OF MANDATE

Pursuant to Judge O'Brien's order of October 1, 1996, this court orders that Judge O'Brien's statement of decision and the judgment to be entered thereon shall be

incorporated into the final judgment. Said monetary orders are in addition to the court's decision of this date.

Plaintiff is ordered to prepare a judgment and submit it to defendant within 15 days for approval as to form and content.